

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH B&B LAND AND LIVESTOCK, L.L.P. AND GANADO, INC. PURSUANT TO
RULE 9019

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee ("Trustee") for the bankruptcy estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee, B&B Land and Livestock, L.L.P. ("B&B"), and Ganado, Inc. ("Ganado") pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit "A" (the "Settlement Agreement"). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the "Chapter 11 Case") against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On January 25, 2012, the Trustee filed the Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement [Doc. No. 977] (the "Preference Protocol Motion"). The Court entered its Order Granting Trustee's Motion to Approve Certain Preference Avoidance Protocols and Terms of Settlement on February 15, 2012 [Doc. No. 1035] (the "Preference Protocol Order"), pursuant to which the Court authorized the Trustee to settle the Trade Preferences¹ in the sums of the Estimated Net Exposure without further order of the Court.

4. Based on his investigation, the Trustee concluded that B&B received not less than \$227,965.86 in transfers from the Debtor (collectively, the "Transfers").

5. The Trustee commenced Adversary Proceeding No. 12-59083 against B&B on October 3, 2012 and filed his First Amended Complaint on December 12, 2012 to avoid and recover the Transfers from B&B ("Preference Claim") and asserted that Ganado was indebted to the Debtor for the same sum as the Transfers ("Receivable Claim").

The Settlement

6. On August 20, 2013, mediation was held and the parties settled the Preference Claim and the Receivable Claim.

¹ Capitalized terms not otherwise defined herein shall have the meaning set forth in the Preference Protocol Motion.

7. To avoid the cost, expense, and delay of litigation, B&B and Ganado are both willing to make immediate payment of \$10,000.00 each, for an aggregate settlement amount of \$20,000.00 (the "Settlement Amount") in satisfaction of the Preference Claim and the Receivable Claim, provided the Court enters a final, non-appealable order approving this Settlement Motion.

8. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Recovery Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

9. The parties agreed to release and discharge each other for any claims arising out of or based on the Transfers, including the Preference Claim and the Receivable Claim; provided, however that B&B and Ganado are entitled to file claims against the Debtor's bankruptcy estate in the amount of the Settlement Amount pursuant to 11 U.S.C. § 502(h).

10. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Preference Claim and the Receivable Claim in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

11. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee, B&B, and Ganado pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

Basis for Relief

12. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation's probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

13. Although the Trustee believes there is legal and factual support for the Preference Claim and Receivable Claim, settlement avoids the costs, expense, delay, and uncertainties of litigation. Litigation creates additional costs and expenses for the Debtor's estate and will thereby further deplete the estate. When evaluating the proposed settlement, the Trustee considered (i) the expenses the Debtor's estate would incur in litigating the Preference Claim and the Receivable Claim, (ii) the probability of success in prosecuting the Preference Claim and the Receivable Claim in light of the asserted defenses, and (iii) the best interests of the Debtor's estate and its creditors.

14. Pursuant to the exercise of his sound business judgment, the Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate.

15. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

By: /s/ Jay P. Kennedy
Jay P. Kennedy (#5477-49)
Counsel for James A. Knauer,
Chapter 11 Trustee
111 Monument Circle, Suite 900
Indianapolis, IN 46204-5125
Telephone: (317) 777-7428
jpk@kgirlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Laura Day 10DelCotto
ldelcotto@dlgfir.com,
dlgecf@dlgfir.com;dlgecfs@gmail.com

David L. Abt davidabt@mwt.net

Amelia Martin Adams
aadams@dlgfir.com,
dlgecf@dlgfir.com;dlgecfs@gmail.com

John W Ames james@bgdlegal.com,
smays@bgdlegal.com;tmills@bgdlegal.com

Jerald I. Ancel jancel@taftlaw.com,
ecfclerk@taftlaw.com;krussell@taftlaw.com

Kay Dee Baird kbaird@kdlegal.com,
pdidandeh@kdlegal.com

Christopher E. Baker
cbaker@thbklaw.com,
thignight@thbklaw.com,
twilkerson@thbklaw.com

T. Kent Barber
kbarber@dlgfir.com,
dlgecf@dlgfir.com;dlgecfs@gmail.com

Robert A. Bell rabell@vorys.com,
dmchilelli@vorys.com

C. R. Bowles
cbowles@bgdlegal.com,
smays@bgdlegal.com;cjenkins@bgdlegal.com

David W. Brangers
dbrangers@lawyer.com

Steven A. Brehm
sbrehm@bgdlegal.com,
bbaumgardner@bgdlegal.com;smays@bgdlegal.com

Kent A Britt kabritt@vorys.com,
cbkappes@vorys.com;dfhine@vorys.com;tbfinney@vorys.com

Kayla D. Britton
kayla.britton@faegrebd.com,
cindy.wondra@faegrebd.com;sarah.herendeen@faegrebd.com

Joe Lee Brown
Joe.Brown@Hardincounty.biz

Lisa Koch Bryant
courtmail@fbhlaw.net

John R. Burns
john.burns@faegrebd.com,
sandy.rhoads@faegrebd.com;oliana.nansen@faegrebd.com

James M. Carr
jim.carr@faegrebd.com,
sarah.herendeen@faegrebd.com,
becky.turner@faegrebd.com

John R. Carr jrccii@acs-law.com,
sfinnerty@acs-law.com

Deborah Caruso
dcaruso@daleeke.com,
mthomas@daleeke.com

Ben T. Caughey
ben.caughey@icemiller.com

Bret S. Clement bclement@acs-law.com, sfinnerty@acs-law.com

Joshua Elliott Clubb
joshclubb@gmail.com

Jason W. Cottrell
jwc@stuartlaw.com,
jbr@stuartlaw.com

Kirk Crutcher kcrutcher@mcs-law.com, jparsons@mcs-law.com

Jack S Dawson
jdawson@millerdollarhide.com,
jowens@millerdollarhide.com;receptonist@millerdollarhide.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com,
sandy.engele@faegrebd.com;sarah.herendeen@faegrebd.com

David Alan Domina
dad@dominalaw.com,
KKW@dominalaw.com;efiling@dominalaw.com

Daniel J. Donnellon
ddonnellon@ficlaw.com,
knorwick@ficlaw.com

Trevor L. Earl tearl@rwsvlaw.com

Shawna M Eikenberry
shawna.eikenberry@faegrebd.com,
sarah.herendeen@faegrebd.com

Jeffrey R. Erler jerler@ghjhlaw.com,
lbell@ghjhlaw.com;ldelcore@ghjhlaw.com

William K. Flynn
wkflynn@strausstroy.com,
fntuttle@strausstroy.com;rlshapiro@strausstroy.com

Robert H. Foree
robertforee@bellsouth.net

Sandra D. Freeburger
sfreeburger@dsf-atty.com,
mbaker@dsf-atty.com

Peter M Gannott
pgannott@gannottlaw.com,
paralegal@gannottlaw.com;gannottlaw@gmail.com

Melissa S. Giberson
msgiberson@vorys.com

Thomas P Glass
tpglass@strausstroy.com

Jeffrey J. Graham
jgraham@taftlaw.com,
ECFClerk@taftlaw.com;dwineinger@taftlaw.com;krussell@taftlaw.com; aolave@taftlaw.com

Patrick B. Griffin
Patrick.griffin@kutakrock.com,
Stephanie.brockman@kutakrock.com

Terry E. Hall
terry.hall@faegrebd.com,
sharon.korn@faegrebd.com;sarah.herendeen@faegrebd.com

Paul M. Hoffmann
phoffmann@stinson.com

John David Hoover
jdhoover@hooverhull.com

John Huffaker
john.huffaker@sprouselaw.com,
lynn.acton@sprouselaw.com;rhonda.rogers@sprouselaw.com

Jeffrey L Hunter
jeff.hunter@usdoj.gov,

USAINS.ECFBankruptcy@usdoj.gov

Jay Jaffe jay.jaffe@faegrebd.com,
sarah.herendeen@faegrebd.com

James Bryan Johnston
bjtexas59@hotmail.com,
bryan@ebs-law.net

Todd J. Johnston
tjohnston@mcjllp.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Edward M King tking@fbtlaw.com,
dgioffre@fbtlaw.com

Erick P Knoblock
eknoblock@daleeke.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Randall D. LaTour
RDLatour@vorys.com,
khedwards@vorys.com;bjtobin@vor
ys.com

David A. Laird
david.laird@moyewwhite.com,
lisa.oliver@moyewwhite.com;deanne.
stoneking@moyewwhite.com

David L. LeBas
dlebas@namanhowell.com,
koswald@namanhowell.com

Martha R. Lehman
mlehman@kdlegal.com,
crbpgpleadings@kdlegal.com;mbak
eley@kdlegal.com

Scott R Leisz sleisz@bgdlegal.com,
disom@bgdlegal.com

Elliott D. Levin robin@rubin-levin.net,
edl@trustesolutions.com;edl@truste
solutions.net

Elliott D. Levin edl@rubin-levin.net,
atty_edl@trustesolutions.com

Kim Martin Lewis
kim.lewis@dinslaw.com,
lisa.geeding@dinslaw.com;patrick.bu
rns@dinslaw.com

James B. Lind jblind@vorys.com

Karen L. Lobring lobring@msn.com

John Hunt Lovell john@lovell-
law.net, sabrina@lovell-
law.net;shannon@lovell-
law.net;paula@lovell-law.net

Harmony A Mappes
harmony.mappes@faegrebd.com,
judith.gilliam@faegrebd.com;sarah.h

erenden@faegrebd.com

John Frederick Massouh
john.massouh@sprouselaw.com

Michael W. McClain
mike@kentuckytrial.com,
laura@kentuckytrial.com

Kelly Greene McConnell
lisahughes@givenspursley.com

James Edwin McGhee
mcghee@derbycitylaw.com,
SeillerWatermanBankruptcyMyecf@
gmail.com;belliott@derbycitylaw.com
;patenaude@derbycitylaw.com;canto
r@derbycitylaw.com

Brian H Meldrum
bmeldrum@stites.com

William Robert Meyer
rmeyer@stites.com

Kevin J. Mitchell
kevin.mitchell@faegrebd.com,
cyndy.maucher@faegrebd.com;olian
a.nansen@faegrebd.com

Terrill K. Moffett
kendalcantrell@moffettlaw.com

Christie A. Moore cm@gdm.com,
ljs2@gdm.com

Allen Morris amorris@stites.com,
dgoodman@stites.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com,
ecf@crowedunlevy.com;karen.martin
@crowedunlevy.com;karol.brown@c
rowedunlevy.com

Erin Casey Nave
enave@taftlaw.com

Matthew Daniel Neumann
mneumann@hbkclaw.com

Walter Scott Newbern
wsnewbern@msn.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com,
amanda.castor@faegrebd.com

Matthew J. Ochs
kim.maynes@moyewwhite.com

Jessica Lynn Olsheski
Jessica.olsheski@justice-law.net,
Julie.streich@justice-law.net

Michael Wayne Oyler
moyler@rswslaw.com

Ross A. Plourde
ross.plourde@mcafeetaft.com,

afton.shaw@mcafeetaft.com

Brian Robert Pollock
bpollock@stites.com

Wendy W Ponader
wendy.ponader@faegrebd.com,
sarah.herendeen@faegrebd.com

Timothy T. Pridmore
tpridmore@mcjllp.com,
lskibell@mcjllp.com

Anthony G. Raluy traluy@fbhlaw.net

Eric C Redman
ksmith@redmanludwig.com,
kzwickel@redmanludwig.com;myecf
mailrl@gmail.com

Eric W. Richardson
ewrichardson@vorys.com,
bjtobin@vorys.com

Joe T. Roberts
jratty@windstream.net

Mark A. Robinson
mrobinson@vhlrlaw.com,
dalbers@vhlrlaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

John M. Rogers johnr@rubin-
levin.net, susan@rubin-levin.net

Joseph H Rogers
jrogers@millerdollarhide.com,
cdow@millerdollarhide.com

James E Rossow jim@rubin-
levin.net, susan@rubin-
levin.net;ATTY_JER@trustesolutions
.com

Nicole R. Sadowski
nsadowski@thbkclaw.com,
btaylor@thbkclaw.com,
twilkerson@thbkclaw.com

Thomas C Scherer
tscherer@bgdlegal.com,
mmccclain@bgdlegal.com

Stephen E. Schilling
seschilling@strausstroy.com

Ivana B. Shallcross
ishallcross@bgdlegal.com,
smays@bgdlegal.com;tmills@bgdleg
al.com;acoates@bgdlegal.com

Suzanna M. Shehan
Suzanne.shehan@kutakrock.com,
nancy.johnson@kutakrock.com,
joy.lehnert@kutakrock.com

James E. Smith
jsmith@smithakins.com,

legalassistant@smithakins.com

William E Smith wsmith@k-gl^{aw}.com, pballard@k-gl^{aw}.com

Robert K Stanley
robert.stanley@FaegreBD.com

Joshua N. Stine kabritt@vorys.com

Andrew D Stosberg
astosberg@lloydmc.com

Matthew R. Strzynski
mstrzynski@kdlegal.com,
Tsylvester@kdlegal.com

Meredith R. Theisen
mtheisen@daleeke.com

John M. Thompson
john.thompson@crowedunlevy.com,
jody.moore@crowedunlevy.com,don
na.hinkle@crowedunlevy.com

Kevin M. Toner
kevin.toner@faegrebd.com,

judy.ferber@faegrebd.com;crystal.ha
nsen@faegrebd.com

Christopher M. Trapp ctrapp@rubin-
levin.net, carmen@rubin-
levin.net;lemerson@rubin-levin.net

Chrisandrea L. Turner
clturner@stites.com

U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

Andrew James Vandiver
avandiver@aswdlaw.com,
sgoins@aswdlaw.com;jrobb@aswdl
aw.com

Andrea L Wasson
andrea@wassonthornhill.com

Stephen A. Weigand
sweigand@ficlaw.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov,

Charles.R.Wharton@usdoj.gov

Sean T. White
swhite@hooverhull.com,
vwilliams@hooverhull.com

Michael Benton Willey
michael.willey@ag.tn.gov

Chad Duane Wuertz
chad@wuertzlaw.com,
joe@wuertzlaw.com,
zach@wuertzlaw.com,
Michele@wuertzlaw.com,
wendy@wuertzlaw.com

Jessica E. Yates jyates@swlaw.com,
docket_den@swlaw.com;mmccleery
@swlaw.com

James T Young james@rubin-
levin.net, lemerson@rubin-
levin.net;carmen@rubin-
levin.net;atty_young@bluestylus.co
m

/s/ Jay P. Kennedy

Jay P. Kennedy, Attorney No. 5477-49
Counsel for James A. Knauer, Trustee

KROGER, GARDIS & REGAS, LLP

111 Monument Circle, Suite 900
Indianapolis, Indiana 46204-5125
(317) 692-9000 Telephone